

Serial No. 10/658,769  
Reply to Office Action

Docket No. IMED-0010-US

### **REMARKS/ARGUMENTS**

Favorable reconsideration and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks. Claims 1-23, 28 and 30-33 are pending in the application, claims 24-7 and 29 are withdrawn.

Claims 1, 2, 4-23 and 30 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 4-23 of copending Application No. 10/876,480. Claims 1, 4, 5, 14-18, 20-23, 28, 30 and 31 were rejected under 35 U.S.C. (e) as allegedly anticipated by Strickland et al. US Patent 6,679,265 (hereinafter "the '265 patent"). Claims 2, 3, 6-13 and 19 were also rejected under 35 U.S.C. 103(a) as allegedly unpatentable over the '265 patent. Applicant respectfully traverses each of these rejections for at least the following reasons.

### **SPECIFICATION**

Applicants have amended the specification to add description reference numeral 140 which was shown in the figures but not described in the specification. The amendment to the specification is not deemed to raise any issues of new matter since reference numeral 140 is shown for example, in Figure 5.

### **DOUBLE PATENTING**

In response to the rejection of Claims 1, 2, 4-23 and 30 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 4-23 of co-pending Application No. 10/876,480, Applicant has filed herewith a Terminal Disclaimer in compliance with 37 CFR 1.321(c) and 1.130(b)

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showing common ownership of the present application with US application 10/876,480. In light of the above Terminal Disclaimer, applicants respectfully submit that Claims 1, 2, 4-23 and 30 are in condition for allowance.

### **35 U.S.C. 102(e) & 103(a) REJECTIONS**

In response to the rejection of Claims 1, 4, 5, 14-18, 20-23, 28, 30 and 31 under 35 U.S.C. 102(e) as allegedly anticipated by "the '265 patent" and the rejection Claims 2, 3, 6-13 and 19 under 35 U.S.C. 103(a) as allegedly unpatentable over the '265 patent, the present amendment amends independent claims 1, 28, and 30 and dependent claim 2.

Claims 1 and 30 have been amended to recite "the first portion of an input gas flow passage is substantially axially aligned with the at least one nasal insert". Further, claim 28 has been amended in a similar manner. Claim 2 has been amended to maintain antecedent basis consistency.

Applicants respectfully submit the '265 patent neither teaches nor suggests a "first portion of an input gas flow passage is substantially axially aligned with the at least one nasal insert" as shown and recited in amended independent claims 1, 28 and 30.

The '265 patent, for example in figures 1-7 shows first and second input gas flow passages 20 and 21 being oriented in a substantially upward-curved fashion which are not axially aligned with the nasal inserts. Accordingly, in light of the claim amendments and above remarks applicants asserts that even if the '265 patent fails to anticipate or obviate the claimed invention under 35 U.S.C 102(e) or 35 U.S.C. 103(a). Applicants respectfully, traverse, and request reconsideration of the rejections based on the '265 patent.

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Further, new claims 32 and 33 have been added to recite that the downward-oriented input gas flow passages are connected to a feed tube that may have a y-connector. Support for these features is found, for example in Figs. 1-6 and in the specification, paragraphs [0012], [0015] – [0017], and [0037] – [0039] of the originally filed application. The downward-oriented input gas flow passages differ from the '265 patent in that they allow the wearer of the cannula to position the gas feed tubes in a variety of manners that may increase the wearer's comfort. Additionally, positioning the input gas flow passages in a downward fashion allows for a more compact design of the cannula than that of the '265 patent. Further, the '265 patent requires an inefficient and non-linear gas because the input gas flow passages are oriented substantially perpendicular from the nasal inserts.

#### **CONCLUSION**

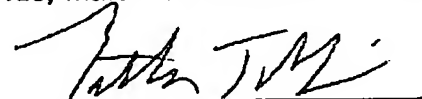
In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, at the telephone number listed below.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3136 and please credit any excess fees to such deposit account.

Respectfully Submitted,  
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